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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

BEFORE THE

Federal Communications Commission

In the Matter of

Implementation of Section 4(g) of the
Cable Television Consumer Protection
Act of 1992

MM Docket No. 93-8

COMMENTS OF DIRECT MARKETING ASSOCIATION

The Direct Marketing Association (DMA) submits these comments in response to the Commission's proposal for implementation of Section 4(g) of the Cable Television Consumer Protection Act of 1992 which requires the Commission to determine whether home shopping stations serve the public interest, convenience and necessity. We will show in these comments that, as a matter of fundamental public policy, the Commission can and should

members include businesses that use direct marketing as the means of promoting their goods and services. It also includes the business concerns that provide the communications path for direct response advertising, such as cable television systems, cable television programmers and over-the-air home shopping stations and networks. It is not our purpose, in submitting these comments, to address the question whether home shopping stations (or any other category of television station or program service) should or should not be accorded "must carry" status under the Cable Act of 1992. However, Congress has made the resolution of the must-carry question to depend at least in part upon an assessment of the public interest values of this particular direct marketing vehicle. Whether or not the Commission confers must-carry right on home shopping stations, public policy compels the conclusion that these stations serve the public interest.

2. In resolving the public interest issue, the Commission can and, we believe, must take account of considerations other than those enumerated in the Cable Act. It is true that Section 4(g) of the Cable Act directs the Commission to consider "three specific factors" in reaching its determination of the threshold public interest issue. Notice of Proposed Rulemaking in Docket MM 93-8 at ¶ 6 (released Jan. 28, 1993) ("NPRM"). But, neither the Act nor its legislative history confines the Commission's inquiry to these factors. Similarly, although the Commission is required to conduct

this proceeding "notwithstanding" prior proceedings.^{1/} the Act and

Sunday Magazine, p. 36 (Feb. 28, 1993). If viewing is measured in terms of consumer response it is unmistakably clear that home shopping television is highly valued by the American public.

5. The attempt to base a public interest determination on "competing demands" for the spectrum used by home shopping stations

City of Cincinnati v. Discovery Network, ____ U.S. ____, 61 USLW
4272, 4277 (March 24, 1993).

8. Home shopping has proved a fast, easy and convenient means for millions of American consumers to become aware of and to purchase the goods and services they want and need. The ability to shop at home is of inestimable benefit to the elderly, to others who are house-bound, to families that do not have the time (because of employment and personal responsibilities) to shop by other means; home shopping is also of value to the millions of Americans who do not have ready access to retail outlets, who find that these outlets do not stock the products and services they want, or who just find that shopping at home is convenient.

9. In its decision repealing the commercial limitation rules, the Commission unequivocally concluded that "audience selection and market forces" are the best, indeed the only reliable, indicants of the public interest value of advertiser-supported media, such as over-the-air television. Television Deregulation, 98 FCC 2d at 1104 (1984). Application of these standards make it unmistakably clear that over-the-air home shopping is in the public interest: the marketplace has worked and "audience selection" has been overwhelmingly positive.

10. The Cable Act does not define the category of stations to be included within those "predominantly utilized for the transmission or sale presentation or program-length commercials." 47 U.S.C. § 533(g). Any attempt to define such a category based upon the amount of commercial matter the station carries during a day (or during specified hours of a day) would be arbitrary and in

conflict with the Television Deregulation decision. There is no evidence to suggest that the Commission should reopen the whole question of the need for regulatory limits on the amount of commercial time carried by all over-the-air station -- a question that is, in any event, fraught with constitutional difficulties (see 1984 Order at 1104). The Commission must conclude that home shopping televisions stations do serve the public interest, convenience, and necessity.

Respectfully submitted



Ian D. Volner

Cohn and Marks
Suite 600
1333 New Hampshire Avenue, N.W.
Washington, DC 20036
(202) 293-3860

Counsel for the Direct
Marketing Association

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